

*This opinion is nonprecedential except as provided by  
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A22-0094**

State of Minnesota,  
Respondent,

vs.

Charles Calvin Lockhart,  
Appellant.

**Filed January 30, 2023  
Affirmed  
Bratvold, Judge**

Hennepin County District Court  
File No. 27-CR-20-8335

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Mary F. Moriarty, Hennepin County Attorney, Zachary Stephenson, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Leah C. Graf, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Gaïtas, Presiding Judge; Bratvold, Judge; and Larson, Judge.

**NONPRECEDENTIAL OPINION**

**BRATVOLD**, Judge

Appellant challenges his conviction for first-degree criminal sexual conduct. Appellant, who identifies as Black, argues that his constitutional rights were violated because his jury venire did not represent a fair cross-section of the community, and the

district court erred by denying his motion to strike the venire. We affirm because even if we assume unfair representation in appellant's jury venire and also assume unfair representation in the Hennepin County jury pool over time, appellant failed to show this underrepresentation resulted from systematic exclusion.

## FACTS

Before summarizing the record facts, we briefly consider the meaning of relevant terms. Appellant Charles Calvin Lockhart's brief to this court points out that jury "venire" can be a broad term, defined as the group of people "selected for jury duty and from among whom" the defendant's jury will be chosen. *Black's Law Dictionary* 1869 (11th ed. 2019). As Lockhart notes, our caselaw sometimes uses the terms "jury venire," "jury pool," and "jury panel" interchangeably. *See, e.g., State v. Griffin*, 846 N.W.2d 93, 100 (Minn. App. 2014) (quotation omitted), *rev. denied* (Minn. Aug. 5, 2014). We agree with Lockhart's suggestion that "jury pool" describes the larger group of jurors summoned for jury service in a week, "jury venire" describes the group of prospective jurors drawn from the jury pool for voir dire and selection in a defendant's case, and "jury panel" describes the jurors seated in a defendant's case.<sup>1</sup>

In April 2020, respondent State of Minnesota charged Lockhart with two counts of first-degree criminal sexual conduct under Minn. Stat. § 609.342, subd. 1 (2018). On

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<sup>1</sup> We note that Minn. R. Crim. P. 26.02, subds. 1-2, refers to "jury panel" as a group of prospective jurors drawn from the jury pool for voir dire and selection and refers to "jury list" as the larger group of jurors summoned for jury service.

August 9, 2021, Lockhart's jury trial began in Hennepin County and the jury venire was called to the courtroom.

Outside the presence of the jury venire, Lockhart moved to strike the venire for failing to reflect a fair cross-section of the community because there was only one prospective juror who identified as Black. Lockhart relied on the prospective-juror list, which showed that, of the 30 prospective jurors in the venire, one individual identified as Black or African American, one individual identified as Asian, one individual identified as two or more races, and the rest of the prospective jurors identified as white.

Lockhart's attorney submitted five exhibits in support of his motion. Three exhibits provided Hennepin County jury-pool statistics and demographic data from 2018, 2019, and 2020 and showed that the year-end percentage of jurors identifying as Black and reporting for the Hennepin County jury pool was 7.7% in 2018, 8.2% in 2019, and 6.2% in 2020. Lockhart also submitted a 2009 report from the Minnesota Demographic Center projecting that 14.4% of Hennepin County's population would identify as Black by 2020. Finally, Lockhart submitted transcribed testimony from the Hennepin County jury-office supervisor.

The district court denied Lockhart's motion, determining that his showing did not address the "pool as a whole," and "there's nothing to indicate that there was any intentional or systematic exclusion of persons of color in the pool itself." The district court added that it would review the evidence Lockhart provided and "revisit the issue" if there was any need.

Jury selection proceeded, and 13 jurors were seated. The trial commenced. The jury found Lockhart guilty on both counts, and the district court sentenced him to 172 months in prison on the first count. Lockhart appeals.

## DECISION

The United States and Minnesota Constitutions require that the jury venire “reflect a fair cross-section of the community.” *Griffin*, 846 N.W.2d at 99-100; *see* U.S. Const. amend. VI (“In all criminal prosecutions, the accused shall enjoy the right to . . . an impartial jury of the . . . district wherein the crime shall have been committed . . . .”); Minn. Const., art. I, § 6 (same); *see also* Minn. R. Crim. P. 26.02, subd. 1(1)(a) (“The jury list must be composed of persons randomly selected from a fair cross-section of qualified county residents.”). But the “Sixth Amendment does not guarantee a criminal defendant a jury of a particular composition or one that mirrors the community.” *State v. Williams*, 525 N.W.2d 538, 542 (Minn. 1994).

To make a *prima facie* showing that a jury venire failed to reflect a fair cross-section of the community, a defendant must show that (1) “the group allegedly excluded is a distinctive group in the community,” (2) “the group in question was not fairly represented in the venire,” and (3) “the underrepresentation was the result of a systematic exclusion of the group in question from the jury selection process.” *Id.* (quotation omitted). If the defendant makes a *prima facie* showing of a violation, the government may rebut it. *Id.* This court reviews a fair-cross-section claim *de novo*. *State v. Brown*, 937 N.W.2d 146, 158 (Minn. App. 2019).

Before turning to the parties' arguments, we examine relevant caselaw on fair-cross-section claims, much of which considers the same process Hennepin County used to summon the jury pool and draw the jury venire for Lockhart's case. In *Williams*, the supreme court considered a challenge to a Ramsey County jury venire that was drawn from a jury pool summoned using a source list of registered voters, licensed drivers, and state-identification-card holders. 525 N.W.2d at 541. Williams, who identified as African American, alleged that the most recent census showed Ramsey County to have an African American population totaling 3.7% of its total population in 1990. *Id.* at 541-42. Two prospective jurors of the 102-member jury pool called the week of Williams's trial self-identified as African American. *Id.* at 542.

The supreme court rejected Williams's fair-cross-section claim on the third element after first concluding that the evidence demonstrated "African-Americans had been underrepresented" in Ramsey County jury venires for "3 years in a row." *Id.* at 543. The supreme court determined that "the evidence fail[ed] to establish systematic exclusion." *Id.* at 544. The supreme court noted, however, that it would "not be satisfied until both the reality and the perception of underrepresentation of African-Americans and other distinct minority groups are eliminated" and that "underrepresentation [that] is not the result of systematic exclusion does not justify complacency or satisfaction with the inclusiveness of the system." *Id.*

In *State v. Roan*, the supreme court concluded that Roan failed in his fair-cross-section challenge to a 75-person Hennepin County jury venire containing 5.3% ethnically or racially diverse jurors. 532 N.W.2d 563, 569 (Minn. 1995). As it did in

*Williams*, the supreme court’s analysis focused on the third element and determined that Roan “may have shown that over a period of time the group of eligible jurors of color has been underrepresented, [but Roan] failed to demonstrate the underrepresentation result[ed] from systematic exclusion.” *Id.* (quotation omitted). In part, the supreme court relied on the “Hennepin County Grand Jury Task Force Report estimat[ing] that Hennepin County reaches over 98 percent of its citizens” by using a source list derived from registered voters, licensed drivers, and state-identification-card holders. *Id.*

In *State v. Willis*, the supreme court relied on *Williams* and *Roan* in denying Willis’s fair-cross-section challenge to a Hennepin County grand jury and jury venire. 559 N.W.2d 693, 700 (Minn. 1997). Once again focusing on the third element, the supreme court reasoned that “[e]ven if [Willis] were to show the necessary underrepresentation, as a matter of law, he could not demonstrate that the underrepresentation resulted from the state’s procedures because . . . this court upheld the same Hennepin County selection process.” *Id.*

In *State v. Gail*, the supreme court again rejected a challenge to a Hennepin County jury venire while observing that “only one person self-identified as African-American on the 50-person venire.” 713 N.W.2d 851, 861 (Minn. 2006). The court determined that Gail “provided no evidence to satisfy the *Williams* standard” and reasoned that even if the court assumed underrepresentation, the court previously upheld the selection process, and Gail “did not show that [Hennepin County’s] procedures [had] changed in any material respect since *Willis* and *Roan*.” *Id.* at 862.

In *Griffin*, this court concluded that Griffin “failed to establish a prima facie case that his jury violated the fair-cross-section requirement.” 846 N.W.2d at 103. On the third element, we held that “[s]ystematic exclusion means that the underrepresentation is attributable to the juror-selection process and not alternative reasons such as individuals failing to show up for jury service.” *Id.* at 101. First, we determined that Olmsted County used the same process as Hennepin County for the source list used to summon the jury pool. *Id.* (citing Minn. R. Gen. Prac. 806). Second, we pointed out that Griffin’s reliance on 2010 census data to show Olmsted County’s population was problematic because the data did not include information on eligible jurors. *Id.* at 102-03. Because Griffin “failed to present evidence correlating the census figures to the percentage of self-identified [B]lack persons in Olmsted County who are qualified for jury service,” we concluded that the district court did not err in denying Griffin’s motion for a new trial. *Id.* at 103.

Most recently, in *Andersen v. State*, the supreme court rejected a fair-cross-section claim by a member of the White Earth Band, a federally recognized tribe. 940 N.W.2d 172, 182 (Minn. 2020). The supreme court relied in part on precedent and concluded that the jury-pool-selection procedures in Becker County were the same as the selection procedures used in Hennepin County and upheld in *Roan*. *Id.* Noting that Andersen “adduced no historical or contemporaneous evidence or statistical analysis to factually support his argument that the jury selection as conducted in Becker County in 2008 systematically excluded White Earth Band members—or Native Americans more generally,” the court held the challenge failed on the third element. *Id.*

With this caselaw in mind, we consider the sole issue in this appeal. Lockhart, who identifies as Black, argues that we should reverse his conviction and remand for a new trial because “[t]he statistics demonstrate a pattern of Black juror underrepresentation and that the county’s method of drawing its jury pools ha[s] led to this systematic exclusion.” We turn to each of the three elements required for a prima facie showing on a fair-cross-section claim.

### **Distinctive Group**

Lockhart argues that though “[t]he district court did not explicitly address th[e] first element,” it is still “well established that people who identify as Black or African American represent a distinctive group in the community.” Lockhart cites to supreme court caselaw supporting this position. *See Williams*, 525 N.W.2d at 542. We conclude that Lockhart has satisfied the first element.

### **Distinctive Group Not Fairly Represented**

To support his claim on the second element, Lockhart must show that persons identifying as Black were “not fairly represented in the venire.” *See id.* (identifying the second element of the fair-cross-section test). Lockhart relies on a projection from a 2009 report that estimated 14.4% of the Hennepin County population would identify as Black by 2020. Lockhart points out that only one of the 30 prospective jurors in his venire, or 3.3%, identified as Black or African American.

Lockhart’s reliance on the projection data reported in 2009, however, is not convincing. The 2009 report may not accurately reflect Hennepin County’s population as of Lockhart’s 2021 trial. The report data is over ten years old and provides only population



*projections*. Lockhart does not submit any actual data on Hennepin County’s population after 2009. And, even if we accept the projections as accurate, the projections do not provide any information on jury eligibility.<sup>2</sup> As we stated in *Griffin*, “we have no way of knowing what percentage of persons self-identifying as [B]lack are over the age of 18, and eligible for jury service.” 846 N.W.2d at 102.<sup>3</sup> Because Lockhart failed to provide the record necessary to establish the population of eligible jurors in Hennepin County who identify as Black, we question whether the second element is satisfied. Still, the district court and respondent appear to accept Lockhart’s claim that persons identifying as Black were not fairly represented in his venire because only one prospective juror of 30 identified as Black. Thus, we proceed to the third element.

### **Underrepresentation Resulted from Systematic Exclusion**

To satisfy the third element, Lockhart must show that “over a significant period of time . . . the group of eligible jurors in question has been significantly underrepresented” in the jury pool as a result of systematic exclusion. *Williams*, 525 N.W.2d at 543.

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<sup>2</sup> A resident is ineligible for jury service if the resident is not a citizen of the United States; is under 18 years old; cannot communicate in the English language; is not physically or mentally capable of rendering satisfactory jury service; has been convicted of a felony and has not had their civil rights restored; has served as a state or federal juror in the past four years; or is a judge serving in the judicial branch of the government. Minn. R. Gen. Prac. 808(b)-(c).

<sup>3</sup> In the nonprecedential opinion in *State v. Johnson*, this court recently concluded, based on the assumption that the Hennepin County projection data was correct, that Johnson satisfied the second element of his fair-cross-section claim. No. A21-1494, 2022 WL 17086760, at \*3 (Minn. App. Nov. 21, 2022). We rejected Johnson’s challenge, however, based on his failure to show that the underrepresentation resulted from systematic exclusion. *Id.* Here, we acknowledge that Lockhart used the same 2009 report as Johnson, but we take a different approach.

Systematic exclusion is defined as “unfair or inadequate selection procedures used by the state rather than, e.g., a higher percentage of ‘no shows’ on the part of people belonging to the group in question.” *Id.* In other words, Lockhart must show “that the underrepresentation was not the result of reasonable and plausible alternative possibilities shown by the statistical data.” *Griffin*, 846 N.W.2d at 102.

Lockhart presented weekly jury-pool data showing that, in total, prospective jurors identifying as Black comprised 7.7% of the jury pool in 2018, 8.2% in 2019, and 6.2% in 2020. As discussed above, Lockhart relied on a 2009 population projection that estimated 14.4% of Hennepin County would identify as Black by 2020.

Even if we assume that Lockhart’s data shows that over a significant period of time, prospective jurors identifying as Black are significantly underrepresented in Hennepin County jury pools, we conclude that Lockhart failed to provide evidence that this underrepresentation resulted from systematic exclusion. Hennepin County’s procedure for creating a source list of prospective jurors has been upheld repeatedly. *See Andersen*, 940 N.W.2d at 182; *Gail*, 713 N.W.2d at 862; *Willis*, 559 N.W.2d at 700; *Roan*, 532 N.W.2d at 569. Indeed, the county’s procedure follows rules adopted by the supreme court. *See* Minn. R. Gen. Prac. 806 (listing sources from which the jury pool is compiled).

Lockhart argues that, as the supreme court noted in *Williams* 30 years ago, “underrepresentation [that] is not the result of systematic exclusion does not justify complacency or satisfaction with the inclusiveness of the system.” 525 N.W.2d at 542. We agree that complacency on this important issue is unacceptable. But Lockhart lacks any legal support for his contention that the long-term nature of the underrepresentation of

prospective jurors identifying as Black amounts to systematic exclusion in Hennepin County's juror-selection procedure. Lockhart cites to Justice Page's concurrence in *Hennepin County v. Perry*:

At some point, a purportedly race-neutral process that perpetuates and reinforces inequality of opportunity (in this case, the opportunity to in fact serve on a grand jury) is no different than a race-based process intended to produce the same result. In the end, no practical difference exists between a process that produces single-race grand juries by chance and one that produces single-race grand juries by design.

561 N.W.2d 889, 897-98 (Minn. 1997) (Page, J., concurring). Justice Page's point is compelling. The third element, however, requires evidence tying underrepresentation of a distinct group in the jury pool to the procedure used to identify and summon individuals for jury service. *See Williams*, 525 N.W.2d at 542.<sup>4</sup>

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<sup>4</sup> For the first time on appeal, Lockhart argues that Hennepin County failed to implement some recommendations in a 1993 report from the Minnesota Supreme Court Race Bias Task Force, relying on a 2019 progress report. Richelle M. Wahi, *Minnesota Judicial Branch Action Following the 1993 Minnesota Supreme Court Task Force on Racial Bias in the Judicial System and Recommendations for Minnesota Judicial Branch Action in FY20-21* (2019). According to Lockhart, the 2019 report notes that the state's collection of race information for people responding to a jury summons and for those who are excused and deferred was "still deemed 'in progress' twenty-six years" after the 1993 report's recommendation. Lockhart also argues that testimony from the Hennepin County jury-office supervisor showed that "her office does not keep data regarding jurors who are summoned or who fail to appear." Lockhart also contends the 1993 report recommended expanding the source list to include "tribal eligible voter lists and lists of recently naturalized citizens." While the 2019 progress report includes "unofficial findings" suggesting "most" tribal eligible voters are on drivers-license or state-identification lists, Lockhart claims Hennepin County failed to supplement the source list as allowed under Minnesota General Rule of Practice 806(b). Because Lockhart raises this issue for the first time on appeal, we decline to address it. *See Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996).

As we explained in *Griffin*, Lockhart must offer prima facie evidence “that the underrepresentation was not the result of reasonable and plausible alternative possibilities shown by the statistical data,” such as a higher percentage of “no shows” in response to juror summonses. 846 N.W.2d at 102. For example, Lockhart has provided no information about the Hennepin County population identifying as Black and *either* the percentage eligible to vote *or* the percentage who do not respond to a jury summons. While Lockhart faults Hennepin County for failing to collect more data, he cannot make a prima facie showing on the third element without providing evidence tied to the procedure used to identify and summon individuals for jury service.

Thus, we conclude that Lockhart has failed to satisfy the third element. Lockhart has not shown whether any underrepresentation of prospective jurors identifying as Black in the jury pool results from systemic exclusion because no evidence points to the Hennepin County procedure used to identify and summon individuals for jury service.

**Affirmed.**